

***United States Court of Appeals  
for the Second Circuit***



**APPELLANT'S  
BRIEF**



75-1363

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75-1363  
To be argued by  
GERALD E. FARRELL

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IN THE  
UNITED STATES COURT OF APPEALS  
For The Second Circuit

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Docket No. - 75-136

Cal. No. - S494  
\_\_\_\_\_

UNITED STATES OF AMERICA,  
Plaintiff-Appellee,

vs.

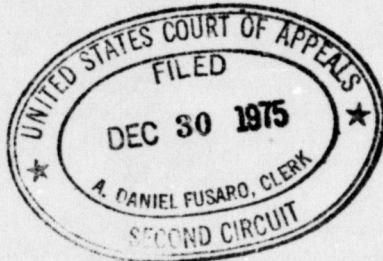
JOSEPH NICHOLAS CRISAFI,  
Defendant-Appellant,

\_\_\_\_\_  
ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF CONNECTICUT

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BRIEF OF DEFENDANT-APPELLANT  
JOSEPH NICHOLAS CRISAFI

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BRIEF OF DEFENDANT-APPELLANT  
JOSEPH NICHOLAS CRISAFI

---

Statement of the Case

On November 18, 1971, a four-count indictment alleging violations proscribed in Title 18, U.S.C., Section 2314 was returned by a New Haven Federal Grand Jury. In it, Joseph Nicholas Crisafi, the sole defendant, was charged with having transported or caused to be transported in interstate commerce four falsely made and forged securities, knowing that said securities were falsely made and forged.

On May 28, 1974, the defendant entered a plea of not guilty to Counts One, Two, Three and Four.



On August 13, 1974 the defendant changed his plea on Count Three to guilty. An "Intention to Enter a Guilty Plea" was also filed on August 13, 1974.

On October 25, 1974 the defendant moved to withdraw his guilty plea.

On June 11, 1975 his motion to withdraw his plea of guilty was denied.

On July 7, 1975 the defendant filed a second motion to withdraw his plea of guilty.

On September 9, 1975 the Court denied his second motion to withdraw his plea of guilty.

On September 9, 1975 the Court sentenced Crisafi as follows:  
Count Three - Time served plus five days.

Timely Notice of Appeal was filed on behalf of the defendant.

#### Statutes Involved

Title 18, United States Code, Section 2314

Whoever, with lawful or fraudulent intent, transports in interstate commerce any falsely made, forged, altered or counterfeited securities or tax stamps, knowing the same to have been falsely made, forged, altered or counterfeited ---

Shall be fined not more than \$10,000 or imprisoned not more than ten years or both.

### Question Presented

1. Was the guilty plea free and voluntary, and did it cover the constitutional requirements as enumerated in Boykin v Alabama?

### The Facts

On various dates in August of 1970 the defendant is alleged to have transported or caused to be transported four falsely made and forged checks from Connecticut to New York. Fourteen months thereafter he was indicted for the alleged acts, but was not apprehended until April of 1974, when he was taken into custody in the Southern District of Florida.

On May 20, 1974 the defendant first appeared in the District Court for Connecticut and at that time he asked for the appointment of counsel.

On May 21, 1974 counsel was appointed.

On May 28, 1974 a plea of not guilty was entered as to all Counts.

The case was scheduled for trial on August 13, 1974 when, on that date, the defendant plead guilty to Count Three. The plea of guilty was made before Judge Robert Zampano who accepted it after proper inquiries into the voluntariness of said plea, the consequences of such a plea and the constitutional protections waived by the plea.

Judge Zampano asked whether Mr. Crisafi, in his opinion, "had



a sufficient amount of time...to talk to Mr. Clifford (his attorney) concerning [his] plea of guilty to Count Three." The answer was yes.

Mr. Crisafi next affirmed that he understood the nature of the charges against him, and went on to state "yes" to the Court's questions on the facts as alleged in the indictment.

The Court thereafter set forth the constitutional rights waived by a plea of guilty and asked the defendant whether he understood he was waiving these rights. Again the answer was "yes."

The defendant also said "yes" when asked if the plea was of his own free will, "no" on being coerced or influenced to plead, and "no" to whether getting the other three counts dropped affected his choice.

"No" promises were made, "no" promises as to sentence by anyone, and "yes" to his understanding of the maximum sentence possible.

The Assistant United States Attorney thereafter set forth the factual basis upon which the government believed it could prove its case in the event of trial, and Mr. Crisafi said he did not challenge any of these statements and that he had "no doubt" that he was guilty.

Also, on August 13, 1974 an "Intention to Enter A Guilty Plea" was filed, containing a statement signed by the defendant noting, among other things, that the defendant understood "every charge made against" him, that in pleading he was acting voluntarily, under-



stood his rights, the consequences of the plea, and stated that, in fact, he was guilty as charged. The various constitutional waivers were set forth, together with the maximum possible penalty. Also, it notes that all possible defenses had been discussed with defense counsel.

On October 25, 1974 the defendant filed a motion to withdraw his plea of guilty on the following grounds:

1. He was not guilty.
2. He did not feel he could receive a proper defense.
3. He was under the belief that he would receive a minimum term.
4. He did not forge the check.
5. He had a bar to prosecution on the grounds "of this District" Speedy Disposition Plan.

A hearing on the Motion was held June 11, 1975, at which time the defendant stated he did not commit the crimes as charged and that he did not believe Thomas Clifford, the defendant's Court appointed public defender would adequately represent him. The Motion was denied.

Thereafter, on July 6, 1975 the defendant filed a second motion to withdraw his plea of guilty stating as his ground that he had not understood that a possible consequence to his plea of

guilty was that any federal time to be served on the charges to which he was pleading might not commence until after state time was served.

The motion was denied, without hearing, on September 9, 1975, and the defendant was sentenced to time served plus five days. The defendant was released from federal custody on September 12, 1975, having completed his sentence.

#### Argument

The guilty plea was free and voluntary and covered the constitutional requirements set forth in Boykin v Alabama.

The case of Boykin v Alabama, 395 U.S. 238, 89 S. Ct. 1709, 23 L. Ed. 2d 274 (1969) is the leading case on the requirements to be met by a Judge before accepting a plea of guilty.

A basis for a finding that the plea was voluntary must be established. This was done.

A clear, knowing waiver of the constitutional rights involved must be shown. This was done.

An understanding of the consequences of the plea on the part of the defendant must be set forth on the record. Again, the record clearly shows that Mr. Crisafi understood the consequences of his guilty plea to Count Three. Nothing in the record indicates an awareness on Judge Zampano's part to Mr. Crisafi's being wanted as a parole violator in California, and it is not



the District Court's obligation to enumerate the possible effects of appellant's plea. Michel v United States, 507 F. 2d 461 (2nd Cir. 1974); United States v Hermann, Slip Opinion No. 1136 (2nd Cir. 1975).

The District Court's sentence kept Mr. Crisafi imprisoned only five days after his sentence, and did not require any federal time on top of any state time which the defendant might owe. If any error could be made, it would be harmless.

A Motion to Withdraw a Plea of Guilty is addressed to the trial Court's discretion. United States v Harris, 160 F. 2d 507 (2nd Cir.); Friedman v United States, 200 F. 2d 690, Cert. den. 345 U.S. 926, reh. den. 345 U.S. 961.

The burdon of proof is on the defendant to show some reason why the judgment should not stand and that reason must amount to a fraud or an imposition on him or a misrepresentation of his legal right. Stidham v United States, 170 F. 2d 294 (8th Cir.)

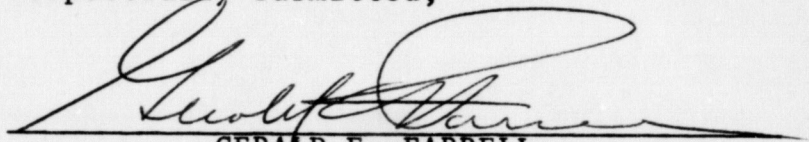
Certainly no "Manifest Injustice" is shown. United States v Parrino, 212 F. 2d 919 (2nd Cir.); United States v Preston Trucking, 364 F. Supp. 515 (D. C. Ohio).

#### Conclusion

For the foregoing reasons, the undersigned, after acquainting himself with the file, reading the transcripts and doing research,

is of the opinion that there exists no meritorious issue on appeal.  
Anders v California, 386 U.S. 738, 744, 87 S. Ct. 1398, 18 L. 3d  
493 (1967).

Respectfully Submitted,



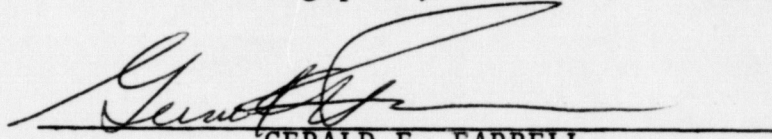
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CERTIFICATION:

A copy of the foregoing was mailed, postage prepaid, this  
8th day of December, 1975 to:

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State Correctional Center  
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GERALD E. FARRELL  
Commissioner of the Superior Court